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Attorneys for Plaintiff

*Attorneys for Plaintiff, Ann Massoud, and all others similarly situated*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANN MASSOUD, individually, and  
on behalf of other members of the  
general public similarly situated,

Plaintiff,

vs.

ROBIN SINGH EDUCATIONAL  
SERVICES, INC. DBA  
TESTMASTERS,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

- (1) Violation of California Civil Code  
§ 1670.8, and
- (2) Violation of Unfair Competition  
Law (Cal. Business & Professions  
Code §§ 17200 *et seq.*)

**Jury Trial Demanded**

1 Plaintiff Ann Massoud (“Plaintiff”), individually and on behalf of all other  
2 members of the public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant  
5 ROBIN SINGH EDUCATIONAL SERVICES, INC. DBA TESTMASTERS  
6 (hereinafter “Defendant”) to stop Defendant’s practice of illegally, willfully,  
7 and maliciously, threatening consumers into silence in violation of California  
8 Law and First Amendment principles of the Constitution, and to obtain redress  
9 for all California Purchasers (“Class Members”) who were threatened, within  
10 the applicable statute of limitations period, into waiving their right to make any  
11 statement regarding Defendant or its goods or services.

12 2. Defendant is a California Corporation and is engaged in the business  
13 of providing test preparation services.

14 3. Defendant makes a condition of its services that its customers refuse  
15 to make a statement against its interests and threaten its customers that they will  
16 need to pay thousands of dollars and go to prison if they make such statements.

17 4. Plaintiff and others similarly situated were threatened in this way by  
18 Defendant. In so doing, Defendant has violated California consumer protection  
19 statutes and Constitutional principles.

20 **JURISDICTION AND VENUE**

21 5. This class action is brought pursuant to Federal Rule of Civil  
22 Procedure 23. All claims in this matter arise exclusively under California law.

23 6. This matter is properly venued in the United States District Court  
24 for the NORTHERN District of California, in that Plaintiff resides and was  
25 threatened in the county of Santa Clara. Plaintiff resides in the NORTHERN  
26 District of California and Defendant does business, inter alia, in the  
27 NORTHERN District of California.

1           7. There is original federal subject matter jurisdiction over this matter  
2 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4  
3 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides  
4 for the original jurisdiction of federal courts in any class action in which at least  
5 100 members are in the proposed plaintiff class, any member of the plaintiff  
6 class is a citizen of a State different from the State of citizenship of any  
7 defendant, and the matter in controversy exceeds the sum of \$5,000,000.00,  
8 exclusive of interests and costs.

9           8. In the case at bar, there are at least 1,000 members in the proposed  
10 Class and Sub-classes nationwide, which will make it likely that at least one  
11 class member will be a citizen of a different state than that of Defendant, and the  
12 total claims of the proposed Class members are in excess of \$5,000,000.00 in the  
13 aggregate, exclusive of interests and costs in that Plaintiff alleges maximum  
14 statutory damages of \$10,000 for each willful, intentional and reckless violation  
15 of California Civil Code § 1670.8 for each and every class member.

#### 16                                   **THE PARTIES**

17           9. Plaintiff Ann Massoud is a citizen and resident of the State of  
18 California.

19           10. Defendant ROBIN SINGH EDUCATIONAL SERVICES, INC.  
20 DBA TESTMASTERS is a California corporation with its principle place of  
21 business and headquarters in California.

22           11. Plaintiff alleges, on information and belief, that Defendant's  
23 business, as pertains to this matter, were created by Defendant at its principle  
24 place of business in California, and were disseminated from California  
25 Nationwide.

26           12. Plaintiff is informed and believes, and thereon alleges, that each and  
27 all of the acts and omissions alleged herein were performed by, or is attributable  
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1 to, Defendant and/or its employees, agents, and/or third parties acting on its  
2 behalf, each acting as the agent for the other, with legal authority to act on the  
3 other's behalf. The acts of any and all of Defendant's employees, agents, and/or  
4 third parties acting on its behalf, were in accordance with, and represent, the  
5 official policy of Defendant.

6 13. Plaintiff is informed and believes, and thereon alleges, that said  
7 Defendant is in some manner intentionally, negligently, or otherwise responsible  
8 for the acts, omissions, occurrences, and transactions of each and all its  
9 employees, agents, and/or third parties acting on its behalf, in proximately  
10 causing the damages herein alleged.

11 14. At all relevant times, Defendant ratified each and every act or  
12 omission complained of herein. At all relevant times, Defendant, aided and  
13 abetted the acts and omissions as alleged herein.

#### 14 **PLAINTIFF'S FACTS**

15 15. On or around October 24, 2014 Plaintiff entered into an agreement  
16 with Defendant to purchase Defendant's test preparation services.

17 16. Plaintiff purchased the Platinum Private Tutoring Package for eight  
18 thousand and seven hundred and fifty dollars (\$8,750), which included eighty  
19 hours of tutoring and materials.

20 17. For Defendant's services, Plaintiff paid more than valuable  
21 consideration.

22 18. In or around, October of 2015, Plaintiff contacted Defendant and  
23 requested that he speak to a manager and obtain a refund. Defendant refused to  
24 accommodate Plaintiff's requests.

25 19. Plaintiff called Defendant for days in the hopes of speaking to a  
26 manager, but was never given the opportunity. Plaintiff would be told that the  
27 managers were out and not allowed to speak to them. Plaintiff was told that she  
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1 was only allowed to speak to the student coordinator.

2 20. Frustrated, Plaintiff made a statement on a website for consumer  
3 reviews, [www.yelp.com](http://www.yelp.com), expressing his dissatisfaction with Defendant's  
4 management (the "Yelp Post").

5 21. In response to Plaintiff's Yelp Post, the Defendant finally attempted  
6 to provide Plaintiff customer support by providing her test preparation courses  
7 for a different test than Plaintiff initially signed up for.

8 22. For consideration of providing courses for a different test for  
9 Plaintiff, Defendant demanded that Plaintiff remove her Yelp Post as  
10 consideration.

11 23. Plaintiff requested that Defendant provide the offer above in  
12 writing. Defendant provided the offer in writing. However, when Plaintiff called  
13 months later to schedule the tutoring pursuant to the offer, Defendant informed  
14 Plaintiff that she could not schedule her classes until Plaintiff removed the Yelp  
15 Post and that if Plaintiff refused to remove the Yelp Post Defendant would  
16 rescind the offer.

17 24. Plaintiff requested the Defendant provide this new offer in writing.  
18 Defendant refused and instead sent a threatening letter dated July 29, 2016.

19 25. In the letter dated July 29, 2016, Defendant threatened Plaintiff that  
20 it would take legal action against her and seek thousands of dollars and jail time.

21 26. In part, Defendant wrote:

22 I demand that you immediately remove this statement from  
23 Yelp. Otherwise, we will take legal action against you and  
24 pursue every remedy available under the law, including an  
award of monetary damaged."

25 27. In addition, in the letter dated July 29, 2016, Defendant made false  
26 accusations that Plaintiff was violating the law and threatened to seek fines of  
27 two thousand and five hundred dollars ("\$2,500) against Plaintiff and  
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1 imprisonment for a year.

2 28. Upon learning this, Plaintiff felt like she was being extorted and was  
3 terrified.

4 29. Plaintiff alleges that such illegal business tactics were part of a  
5 common scheme to silence consumers from making statements against  
6 Defendant's interests.

7 30. Plaintiff alleges that such illegal business tactics were part of a  
8 common scheme that impacted thousands of consumers worldwide in an attempt  
9 to gain an unfair business advantage against its consumers and illegally profit  
10 from such tactics.

### 11 **CLASS ACTION ALLEGATIONS**

12 31. Plaintiff brings this action, on behalf of herself and all others  
13 similarly situated, and thus, seeks class certification under Federal Rule of Civil  
14 Procedure 23.

15 32. The class Plaintiff seeks to represent (the "Class") is defined as  
16 follows:

17 All individuals in the United States, who were  
18 contracted with Defendant or were threatened by  
19 Defendant, within the applicable statute of limitations  
period, into waiving their right to make any statement  
regarding Defendant or its goods or services.

20 33. As used herein, the term "Class Members" shall mean and refer to  
21 the members of the Class described above.

22 34. Excluded from the Class are Defendant, its affiliates, employees,  
23 agents, and attorneys, and the Court.

24 35. In addition, Plaintiff seeks to represent the Subclass of individuals  
25 defined as follows ("the Subclass"):

26 All individuals in California, who were contracted with  
27 Defendant or were threatened by Defendant, within the  
28 applicable statute of limitations period, into waiving

1           their right to make any statement regarding Defendant or  
2           its goods or services.

3           36. Plaintiff reserves the right to amend the Class, and to add additional  
4 subclasses, if discovery and further investigation reveals such action is  
5 warranted.

6           37. Upon information and belief, the proposed class is composed of  
7 thousands of persons. The members of the class are so numerous that joinder of  
8 all members would be unfeasible and impractical.

9           38. No violations alleged in this complaint are contingent on any  
10 individualized interaction of any kind between class members and Defendant.

11           39. Rather, all claims in this matter arise from the identical, false,  
12 affirmative written statements from Defendant to Class Members.

13           40. There are common questions of law and fact as to the Class  
14 Members that predominate over questions affecting only individual members,  
15 including but not limited to:

- 16           (a) Whether Defendant engaged in unlawful, unfair, or deceptive  
17 business practices with respect to Plaintiff and other Class  
18 Members;
- 19           (b) Whether Defendant threatened Plaintiff and other Class  
20 Members into waiving their right to make any statement  
21 regarding Defendant or its goods or services;
- 22           (c) Whether Defendant contracted with Plaintiff and other Class  
23 Members into waiving their right to make any statement  
24 regarding Defendant or its goods or services;
- 25           (d) Whether Defendant violated California Bus. & Prof. Code §  
26 17200, *et seq.* and California Civil Code § 1670.8;
- 27           (e) Whether Defendant violated California Bus. & Prof. Code §  
28 17200, *et seq.* and California Civil Code § 1670.8;

- 1 (f) Whether Plaintiff and Class Members are entitled to equitable  
2 and/or injunctive relief;
- 3 (g) Whether Defendant's unlawful, unfair, and/or deceptive  
4 practices harmed Plaintiff and Class Members; and
- 5 (h) The method of calculation and extent of damages for Plaintiff  
6 and Class Members.

7 41. Plaintiff is a member of the class and subclass she seeks to represent

8 42. The claims of Plaintiff are not only typical of all class members,  
9 they are identical.

10 43. All claims of Plaintiff and the class are based on the exact same  
11 legal theories.

12 44. Plaintiff has no interest antagonistic to, or in conflict with, the class.

13 45. Plaintiff is qualified to, and will, fairly and adequately protect the  
14 interests of each Class Member, because Plaintiff was threatened by Defendant  
15 during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions  
16 concerns the same business practices described herein irrespective of where they  
17 occurred or were experiences. Plaintiff's claims are typical of all Class Members  
18 as demonstrated herein.

19 46. Plaintiff will thoroughly and adequately protect the interests of the  
20 class, having retained qualified and competent legal counsel to represent herself  
21 and the class.

22 47. Common questions will predominate, and there will be no unusual  
23 manageability issues.

24 **FIRST CAUSE OF ACTION**

25 **Violation of California Civil Code § 1670.8**

26 48. Plaintiff incorporates by reference each allegation set forth above.

27 49. Pursuant to California Civil Code Section 1670.8, it is unlawful to,  
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“threaten or to seek to enforce [a contract or proposed contract for the sale or lease of consumer goods or services including a provision waiving the consumer's right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services], or to otherwise penalize a consumer for making any statement protected under this section.

50. By threatening Plaintiff to remove the Yelp Post and making his removal of the Yelp Post a condition of receiving more classes, Defendant has violated this provision

51. By engaging in the above referenced business practices, Defendant has violated this provision with respect to each and every Class Member.

## SECOND CAUSE OF ACTION

### Violation of Unfair Business Practices Act

(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

52. Plaintiff incorporates by reference each allegation set forth above.

53. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a defendant's business practices and the alleged harm--that is, evidence that the defendant's conduct caused or was likely to cause substantial injury. It is insufficient for a plaintiff to show merely that the defendant's conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

### UNFAIR

54. California Business & Professions Code § 17200 prohibits any “unfair ... business act or practice.” Defendant’s acts, omissions,

1 misrepresentations, and practices as alleged herein also constitute “unfair”  
2 business acts and practices within the meaning of the UCL in that its conduct is  
3 substantially injurious to Purchasers, offends public policy, and is immoral,  
4 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs  
5 any alleged benefits attributable to such conduct. There were reasonably  
6 available alternatives to further Defendant’s legitimate business interests, other  
7 than the conduct described herein. Plaintiff reserves the right to allege further  
8 conduct which constitutes other unfair business acts or practices. Such conduct  
9 is ongoing and continues to this date.

10 55. In order to satisfy the “unfair” prong of the UCL, a consumer must  
11 show that the injury: (1) is substantial; (2) is not outweighed by any  
12 countervailing benefits to Purchasers or competition; and, (3) is not one that  
13 Purchasers themselves could reasonably have avoided.

14 56. Here, Defendant’s conduct has caused and continues to cause  
15 substantial injury to Plaintiff and members of the Class. Plaintiff and members  
16 of the Class have suffered injury in fact due to Defendant’s decision to prevent  
17 Plaintiff and Class members from making statements about Defendant and its  
18 services. Thus, Defendant’s conduct has caused substantial injury to Plaintiff  
19 and the members of the Class.

20 57. Moreover, Defendant’s conduct as alleged herein solely benefits  
21 Defendant while providing no benefit of any kind to any consumer. Such threats  
22 and bargaining takes away consumers’ right to make statements about Defendant  
23 and its services, and Defendant benefits from having negative statements made  
24 against it. Thus, the injury suffered by Plaintiff and the members of the Class is  
25 not outweighed by any countervailing benefits.

26 58. Finally, the injury suffered by Plaintiff and members of the Class is  
27 not an injury that these Purchasers could reasonably have avoided. Plaintiff and  
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1 members of the Class are not always fully aware of their legal rights and the  
2 threats that Defendant made influence Class members' decision to make  
3 statements about Defendant and its services. Therefore, the injury suffered by  
4 Plaintiff and members of the Class is not an injury which these consumers could  
5 reasonably have avoided.

6 59. Thus, Defendant's conduct has violated the "unfair" prong of  
7 California Business & Professions Code § 17200.

### 8 **FRAUDULENT**

9 60. California Business & Professions Code § 17200 prohibits any  
10 "fraudulent ... business act or practice." In order to prevail under the  
11 "fraudulent" prong of the UCL, a consumer must allege that the fraudulent  
12 business practice was likely to deceive members of the public.

13 61. The test for "fraud" as contemplated by California Business and  
14 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
15 common law fraud, a § 17200 violation can be established even if no one was  
16 actually deceived, relied upon the fraudulent practice, or sustained any damage.

17 62. Here, not only were Plaintiff and the Class members likely to be  
18 deceived, but these consumers were actually deceived by Defendant. Such  
19 deception is evidenced by the fact that Plaintiff needed to consult an attorney  
20 about her legal rights as she was unaware if she was forced to remove her  
21 statement. For the same reason, it is likely that Defendant's fraudulent business  
22 practice would deceive other members of the public.

23 63. Thus, Defendant's conduct has violated the "fraudulent" prong of  
24 California Business & Professions Code § 17200.

### 25 **UNLAWFUL**

26 64. California Business and Professions Code Section 17200, et seq.  
27 prohibits "any unlawful...business act or practice."  
28



1 notify all Class Members of the unlawful and deceptive  
2 conduct herein;

3 (d) Actual damages suffered by Plaintiff and Class Members as  
4 applicable or full restitution of all funds acquired from  
5 Plaintiff and Class Members;

6 (e) Punitive damages, as allowable, in an amount determined by  
7 the Court or jury;

8 (f) Any and all statutory enhanced damages;

9 (g) All reasonable and necessary attorneys' fees and costs  
10 provided by statute, common law or the Court's inherent  
11 power;

12 (h) Pre- and post-judgment interest; and

13 (i) All other relief, general or special, legal and equitable, to  
14 which Plaintiff and Class Members may be justly entitled as  
15 deemed by the Court.

16  
17 Dated: February 24, 2017 Respectfully submitted,

18 LAW OFFICES OF TODD M. FRIEDMAN , PC  
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20 By: /s Todd. M. Friedman

21 TODD M. FRIEDMAN, ESQ.

22 Attorney for Plaintiff Anthon Fehrenbach  
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